

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No. 348	Press Mis.
Dated 28.6.1938	

Not to be folded or roughly handled

Fort Saint George, Political Consultation, 1st June 1858.

No. 13. From J. R. BOYSON, Esq., Honorable Company's Solicitor; to the Chief Secretary to Government, Fort Saint George, dated 15th May 1858, No. 246.

SIR,

1. With reference to the letter noted in the margin, I have the honor to report, for the information of Government, that I submitted the proposed Draft "Bill to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic" to the Advocate General with a request that he would advise whether, as framed, its provisions sufficiently provided against those claims which are to be the subject of "Summary investigation," under the 12th and following Sections of the proposed Bill, being referred by the Supreme Court, for that purpose, to the Master, and I herewith send a copy of the Advocate General's opinion on this point.

Letter from Mr. H. Forbes, Acting Secretary to Government; to the Honorable Company's Solicitor, dated 16th April 1858, No. 261, Political Department.

2. Further consideration satisfied me that the provisions of the proposed Draft Bill required amendment and modification in several respects, some of them involving matter of great importance. I therefore again re-submitted the Draft Bill to the Advocate General with the instructions of which I enclose a copy.

3. I subsequently had much communication with the Advocate General on the subject, and he ultimately modified the Draft of the proposed Bill as shewn by the alterations in the copy of it herewith sent, and wrote the further opinion of which I also enclose a copy.

4. Previous to Mr. Forbes' departure for Calcutta, I had the satisfaction of having a long interview with him on this subject and of conveying to him all such information as seemed to me likely to be useful relative to the affairs of the late Nabob; the position of the property which at one time belonged to the Nabob, the past dealings with it, and the legal and other proceedings arising out of the Nabob's affairs or matters in which he was directly or indirectly interested, which had taken place since the Nabob's death. I also explained to Mr. Forbes the grounds upon which the Advocate General and I considered the proposed amendments in the Draft Bill to be both expedient and necessary, as well as the Advocate General's views and my own on the whole case. I likewise furnished Mr. Forbes, with the Draft Bill as altered by the Advocate General and with copies of all the papers above referred to, as well as with certain other papers which I thought would be useful to him in the further consideration of the matter and the final revision of the Draft Bill, and I think that Mr. Forbes now has all needful information on the subject.

5. In obedience to the orders of Government, I forward herewith a Memo: stating shortly the particulars (so far as they are within my knowledge) of all Actions and Suits brought and instituted in the Supreme Court at Madras since the Nabob's death in respect of debts and mortgages alleged to have been incurred and executed by third parties for and on behalf of the Nabob. Mr. Forbes has not been furnished with a copy of this Memo: but he is fully aware of the general nature of all these proceedings.

6. In conclusion, I would beg to add that if the proposed Bill is amended in the manner or to the effect advised by the Advocate General in the papers above mentioned, I do not anticipate that there will be much difficulty in effectually working the Act and carrying out what I believe to be the objects and intentions of the Legislative Council and of this Government.

INSTRUCTIONS.

Mr. Advocate General will be pleased to advise Government whether the proposed Draft "Bill to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic" needs modification or amendment, and if so in what respects either to free it from ambiguity or to render it more effectual for attaining the desired ends.

The Solicitor begs to suggest for Mr. Advocate General's consideration that it is desirable that the Bill should be modified and amended in the following respects.

As to the period from which Interest at 6 per Cent only shall be calculated upon the claims of Creditors coming under the provisions of Section XII.

By providing that where any sum of money was paid by the late Nabob in his life time in specific discharge of Interest at a higher rate than 6 per cent such payment shall not be reopened or questioned but Interest at the reduced rate of 6 per Cent (as provided by the Bill) shall be calculated from the period up to which Interest at any higher rate shall have been specifically discharged by any such payment by the Nabob. The Bill as at present framed would sanction the opening of an Account Current between the Estate of the late Nabob and a claimant, and giving the claimant credit on the one side for all sums of money actually advanced and simple Interest on those sums at 6 per Cent from the dates of their respective advance and debiting the claimant on the other side with all payments made by the late Nabob in his life time and Interest on all such payments from the respective dates on which they were made; the result of this mode of calculation to a Creditor who during any length of time previous to the Nabob's death had received Interest on his debt on security at 12 or 18 or at any higher rate would be very serious and in the case of a debt of long standing upon which Interest had been paid at a high rate make the claimant a debtor to instead of a Creditor upon the Nabob's Estate, this mode of calculation may have been contemplated by the Legislative Council but it is hardly probable and it is at all events very desirable that the doubt (admitting it to be such) should be effectually put an end to and the duty and authority of the Supreme Court clearly defined.

As to the place of deposit of the declaration referred to in Section XII.

The Solicitor considers that it is in the highest degree desirable that the Master should have nothing whatever to do with the claims which become the subject of summary investigation under the XII and following Sections and with this object he suggests that the Registry of the Supreme Court would be a more desirable and a far more convenient place of deposit for the declarations than the Master's office. They can be produced in Court when required far more readily from the Registry than the Master's office.

As to giving the Receiver or the Government of Madras full particulars of claims coming within the operation of Section XII.

The Solicitor thinks that the Bill should provide for the claimant furnishing the Receiver or the Government of Madras with a full and detailed Statement of his claim, shewing dates of advance, amounts advanced, how and to whom paid, &c., &c., 14 days at least before the day of investigation, in order to due enquiry being made and such information obtained as will enable the Government effectually to test and if necessary rebut and cut down the claim by evidence and otherwise. This object might be attained by the Courts when fixing the day of investigation, also giving directions as to the delivery of the desired particulars, &c., but the Solicitor submits that it will be better more to provide for it in the Bill.

As to "Interest" subsequent to the Nabob's death.

Section XV provides for the Courts "ascertaining and determining in a summary way what sum was due from the said Nabob at the time of his death to the claimant." This requires alteration for the Court must ascertain what is due to the claimant at the time of making its award and this will involve the calculation of Interest subsequent to the Nabob's death and the taking into account any sums realised by the claimant on account by sale of Landed property or Chattels subsequent to the Nabob's death.

As to the conveyance and assignment of Land and Houses and Chattels real sold by the Receiver.

It is in the Solicitor's opinion of the utmost importance that the Act should provide that a conveyance or assignment from the Receiver alone shall confer an absolute and indefeasible Title upon any purchaser and to Schedule to the Act a Form of conveyance as without this provision many questions may arise of a nature which it is especially desirable to avoid, such as whether the heirs of the late Nabob are not necessary parties to a valid conveyance of any Land or Chattels real which belonged to the Nabob at the time of his death, &c., &c.

As to a splitting up of claims.

The Solicitor suggests the expediency of providing that every person coming in under Section XII shall come in, in respect of all his claims of every sort, or not at all, without such a provision a claimant, having a portion of his claim covered by some security, bearing an exorbitant rate of Interest and altogether of a usurious character, may elect to make this available and to come in under Section XII in respect of other claims for which he has no security.

As to assignment of claims.

The Solicitor suggests that it would be desirable to provide against any assignment or mortgage of claims subsequent to the passing of the Act. Looking at the nature of the transactions between the late Nabob (or rather between those who were about him) and his Creditors there will be more than enough difficulty in arriving at the truth and a prohibition against further assignments will tend to prevent greater complexity.

As to claims under Isteeffa Cutcherry Bonds issued by order of the late Nabob in discharge of Goolam Moortoza Khan's debts.

Goolam Moortoza Khan passed through the Insolvent Court many years ago for debts amounting in the aggregate to several lakhs of Rupees, some years afterwards the late Nabob was a party to an arrangement with Goolam

Moortoza Khan's Creditors under which they accepted Isteeffa Cutcherry Bonds for amounts then agreed upon, payable by Annual Instalments without Interest in full discharge of all claim against Goolam Moortoza Khan, who thereupon obtained his final discharge from the Insolvent Court. It is said (and probably with some truth) that a great portion of the liabilities inserted in Goolam Moortoza Khan's Schedule were incurred on behalf of the late Nabob or arose out of transactions with which he was connected, no money was "advanced to or paid for the use of the Nabob" by the holders of these Securities, and as Section XII is now framed it is at all events doubtful whether claimants under these Securities come within its operation. The Solicitor submits that it will be desirable to remove this doubt.

The above are the only points which have as yet occurred to the Solicitor as needing consideration

COPY OPINION.

I have introduced into the margin of the Printed Draft Bill in Sections VII, VIII, IX, XII, and XV, additions which I consider essential to the proper working of this Act. I have also introduced a new Section which I have numbered V $\frac{1}{2}$ to shew that it is to precede the present Section VI. This also I consider important. The three *Provisoes* which I have added to Section XII I think very important; the 1st to prevent any question about Interest at whatever rate *bonâ fidè* paid by the Nabob in his life time; this I think should not be opened or questioned but 6 p. c. be calculated from the date of the last payment of Interest in the Nabob's life time. The 2nd is to prevent splitting of claims by parties who may have only Paper vouchers in respect of some claims, and may therefore be very willing to claim for these under Section 12, but who may have Jewels or other valuables mortgaged to them as Security for other claims bearing it may be 24 per Cent Interest. The third is to prevent parties so circumstanced from assigning any of their claims after the passing of this Act. With the same object I have to this 3rd Proviso added some words *in pencil* which I here repeat "or if made or executed since the death of the said late Nabob unless proved to have been made *bonâ fidè* and for a valuable consideration, the proof whereof shall lay upon the person claiming under such assignment." I think these words may be useful, but I cannot call them essential.

I also think that a clause somewhat to the following effect should be introduced after the present Section XII. "Every person claiming to be a Creditor of the said late Nabob in respect of any Security commonly called and known as an Istafa Cutcherry Bond issued by order of the said late Nabob in discharge of or favor or on account of any debt of Ghoolam Moortoza Khan Bahadoor who shall file such declaration as is in the next preceding Section mentioned according to the provisions of the said Section shall be entitled to the benefits of such Section in respect of the debt due by the said Ghoolam Moortoza Khan Bahadoor for or on account of which such Istafa Cutcherry Bond was originally issued, the amount thereof to be estimated in respect of monies and goods in the manner in and by Section XII provided."

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Unless some such provision is made the holders of these Bonds, who are clearly entitled to all advantages given to any of the Nabob's Creditors, could not come in under this Act as the money or goods given to Ghoolam Moortooza Khan, even if chiefly for the Nabob's use, would be difficult to be proved to have been so given, and certainly none of them were given to the Nabob.

8th May 1858.

(Signed) THOMAS SIDNEY SMYTH,
Advocate General.

On further consideration I think that Section IX will be improved by the addition of the words I have now added in the margin. I have therefore added those words also to those which I first introduced in the margin of Sections VII and VIII, and also in one part of my additions to Section XII. In fact I think that, *wherever* the words "or upon any property whatsoever which belonged to the said Nabob in his life time" occur they should be followed by the words I refer to, *viz.*, "and which was assigned or conveyed by the said Nabob to any person "without valuable consideration for the purpose of raising money upon the security thereof by way of mortgage or otherwise." I have not time, the Steamer being expected so much before her appointed time, to explain my reasons for these proposed additions, but the Honorable Company's Solicitor is in possession of them, and will have an opportunity of explaining them fully to the present Member for Madras of the Legislative Council, Mr. Henry Forbes. But one Copy of the Draft Bill has been furnished for the joint use of myself and the Honorable Company's Solicitor, otherwise I would, if time permitted, have had my amendments fair copied on another copy.

I also think that either by way of another Proviso to Section XII or as a separate clause, a provision like the following should be introduced.

"Provided also and lastly that every person claiming to be a Creditor of the said late Nabob " [or in respect of any property whatsoever which belonged to the said Nabob in his life time, and which was conveyed or assigned by the said Nabob to any person without any valuable consideration for the purpose of raising money upon the security thereof by way of mortgage or otherwise] who shall file such declaration as is hereinbefore mentioned shall also and at the same time furnish to the Chief Secretary of the Government of Fort Saint George [or to the receiver appointed under this Act] full particulars of his claim, and in case such particular [or such amended particulars as herein after mentioned] shall appear insufficient, it shall be lawful for the East India Company [or for the receiver] to apply to the said Court or Judge thereof for an order for amended and better and further particulars and in case the Court or a Judge thereof shall grant such order, the claim of such person shall not be investigated until 14 days from the time when such person shall have furnished to the said [Chief Secretary or Receiver] such particulars as the said Court or a Judge thereof shall deem sufficient.

COPY OPINION.

I think that the words of Section XV as it now stands, would, if properly construed, prevent the Court from referring it to the Master to take an account of the claims which may be made against the Estate of the late Nabob, but if Government particularly desire to prevent the possibility of such references, the simplest and most sure and effectual way of doing so, and of preventing all possibility of doubt or discussion on the subject (supposing the question to be raised before a new Judge) would be to add, immediately after the words "in a summary way" the words "and not by referring the same to the Master of the said Court."

20th April 1858.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

(True Copies.)

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

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MEMO : of Actions and Suits brought and instituted in the Supreme Court at Madras since the death of the late Nabob in respect of Debts and Mortgages which are alleged to have been incurred and executed by these parties for and on behalf of the Nabob.

SHAHABOODEEN KHAN,

versus

HAJEE MOORTOZAH AND GHOOLAM MAHOMED SAIB.

This was an Action on the plea side of the Supreme Court upon a Promissory Note for Rupees 8,000. Defendant, gave a Cognovit payable by Instalments some of which Instalments they paid and then made default whereupon Judgment was signed and execution issued, under this execution the Sheriff sold all the right title and interest of the Defendants in 3 properties, one of these properties situate at Mowfoozpettah in the Zillah of Chingleput (which Plaintiff purchased) at one time belonged to the late Nabob and is said to have been conveyed by him to Hajee Moortozah (but for what consideration or for what purpose the Company's Solicitor has not been able to ascertain) and the other 2 properties belonged to Hajee Moortozah himself. There is still a balance alleged to be due under the Judgment. The Servants of the late Nabob are still in possession of Mowfoozpettah.

JAFFERJEE,

versus

GHOOLAM MAHOMED SAIB.

This was an Action on the plea side of the Supreme Court upon a Promissory Note. Plaintiff obtained a Judgment and issued execution under which the Sheriff sold the Defendant's right Title and interest in "Wood's Gardens" in the Mount Road which Plaintiff purchased. Plaintiff had no mortgage of those Premises but believed that the legal Estate was vested in the Defendant. The Begum Auzeem Oon Nissa claims those Premises under an alleged gift by parol from the late Nabob and is now in possession of them. The Title Deeds are in the possession of Madar Ool Oomrah formerly the Dewan of the late Durbar. Plaintiff has never realised any thing under his Judgment excepting the Sheriff's Bill of Sale to himself.

BUNSEELAU ABEERCHUND,

versus

GHOOLAM MAHOMED SAIB.

These proceedings were founded upon a Warrant of Attorney to confess a Judgment. The Plaintiff also held as collateral security the Title Deeds of a Market and Premises in Govindapah Naick Street, in Black Town, belonging to the late Nabob and assigned by him to the Defendant for the purpose of raising money by mortgage of them. Plaintiff signed Judgment issued execution and under such execution the Sheriff seized and sold the Premises to Arnachella Chetty for 15,000 and odd Rupees out of their purchase money Plaintiff's execution was satisfied and the balance was paid to another Judgment Creditor who had a *fi fa* in the Sheriff's Office. The premises are considered to have realised a fair price.

CAUSEE DOSS

versus

GHOOLAM MAHOMED SAIB.

This was a Suit on the Equity side of the Supreme Court by Plaintiff as mortgage of certain premises in Triplicane known as "Manowar Bagh" and 3 Jewels of considerable value, the Plaintiff obtained a Decree for foreclosure and sale and the Master ultimately sold the "Manowar Bagh" for 7,000 Rupees and the three Jewels (one of them being a string of large Pearls) for an

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aggregate amount of Rupees 41,550. The "Manowar Bagh" did not realise more than half its value; but the Jewels realised more than their estimated value. Plaintiff purchased the "Manowar Bagh" through and in the name of his Nephew and the premises are now in Plaintiff's possession, he having recovered them by means of an Action of Ejectment in the Supreme Court. There is still a balance alleged to be due under the Judgment.

LUTCHMEE DUTT DAVAY

versus

GHOOLAM MAHOMED SAIB.

This was an Action on the plea side of the Supreme Court on one Promissory Note collaterally secured by a mortgage or deposit of Jewels and on another Promissory Note without Collateral Security; Plaintiff went to trial Exparte obtained a Verdict, signed Judgment and issued execution under which the Sheriff sold the mortgaged Jewels which are said to have realised fair prices. There is still a balance alleged to be due under the Judgment.

MUZZAR ALLY

versus

GHOOLAM MAHOMED SAHIB.

This was an Action on the plea side of the Supreme Court on a Promissory Note without Collateral Security. Plaintiff went to trial Exparte obtained a Verdict, signed Judgment and issued execution under which the Sheriff sold all the right Title and interest of Defendant in the "Now Lac Gardens" near Arcot and the gardens at Sautghur both in the Collectorate of North Arcot alleged to have been previously conveyed by the late Nabob to Defendant for the purpose of raising money by mortgage. The Title Deeds of these properties are said to be in the possession of Madar Ool Oomrah late Dewan of the Durbar. Defendant never had any *beneficial* interest in these properties and they are still in the possession or under the control of those persons who were Servants or Agents of the late Nabob and who in his life time had charge of them.

VELLAMEAH

versus

GHOOLAM MAHOMED SAIB AND HAJEE MOORTOZAH.

This was an Action on the plea side of the Supreme Court on a Promissory Note without Collateral Security, it was compromised by payment of Debt and Costs.

MAHOMED SALLAY

versus

HAJEE MOORTOZAH AND NARASING BAWN LALAH.

This is an Action on the plea side of the Supreme Court on a Promissory Note without Collateral Security. The Action is still pending and has not yet been tried.

RAJAH COONDUM LALL

versus

GHOOLAM MAHOMED SAIB

This was a Suit on the Equity side of the Supreme Court for the foreclosure of a mortgage on certain Premises at Mambalum Sydapet known by the name of the "Roshun Bagh" and for the sale of such premises and the application of the proceeds to the liquidation of the mortgage. These Premises were the property of the late Nabob and were conveyed by him to Defendant ostensibly, and on the face of the conveyance for a valuable consideration but in truth wholly without

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consideration and merely for the purpose of enabling Defendant to raise money upon them by mortgage for the use of the Nabob. Defendant mortgaged them to one Yadeelroy Laulah who assigned to Plaintiff. Plaintiff obtained an Exparte Decree, and under this Decree the Master sold by Public Auction, when the Company's Solicitor on their behalf but in his own name purchased the Premises for 25,000 Rupees, took a formal conveyance to himself and afterwards conveyed to the Honorable Company. There is a large balance alleged to be still due under the Decree in this Suit.

GOVINDARAM AND IAYA GOPAUL DOSS

versus

GHOOLAM MAHOMED SAIB AND HAJEE MOORTOZAH.

This was an Action on the Plea side of the Supreme Court on a Promissory Note for Rs. 4,220. Plaintiffs went to trial Exparte, obtained a Verdict, Signed Judgment for principal, Interest and Costs and issued execution thereon but have not made any levy or realised any part of the Judgment.

GOVINDARAM AND IAYA GOPAUL DOSS

versus

GHOOLAM MAHOMED SAIB AND HAJEE MOORTOZAH.

This was an Action on the Plea side of the Supreme Court on a Promissory Note for Rupees 10,500. Plaintiffs went to trial Exparte obtained a Verdict, signed Judgment for principal, interest and costs and issued execution and thereunder (by means of an Action against the Sheriff) realised Rupees 3,580 the balance of the Judgment is alleged to be still due.

GOVINDARAM AND IAYA GOPAUL DOSS

versus

GHOOLAM MAHOMED SAIB.

This was an Action on the Plea side of the Supreme Court on a Promissory Note for Rupees 40,000. Defendant gave a cognovit upon which Plaintiff signed Judgment and issued execution for Rupees 20,679-12-8, but have not made any levy or realised any part of the Judgment.

GOVINDARAM AND IAYA GOPAUL DOSS

versus

GHOOLAM MAHOMED SAIB.

This was an Action on the Pleaside of the Supreme Court on a Promissory Note for Rupees 25,306-3-6. Plaintiffs went to trial Exparte, obtained a Verdict for Rupees 39,413-3-0 signed Judgment for that amount with costs and issued execution, but have not made any levy or realised any part of the Judgment.

G. G. K. RICHARDSON AND J. S. S. RICHARDSON

versus

GHOOLAM MAHOMED SAIB.

This was a Suit on the Equity side of the Supreme Court for the foreclosure of a mortgage from Defendant to Plaintiffs of the following properties, viz.

Pater's Gardens.
Moorat's Gardens.
Sir James Home's Gardens.

Brodie Castle.
Wallajah Bagh.
House at Ennore.

2 Houses at the Red Hills.

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and the sale of those premises and application of the proceeds to the liquidation of the mortgage. All these premises were the property of the late Nabob and were by him conveyed to Defendant ostensibly and on the face of the conveyances for valuable consideration but in fact wholly without consideration and merely for the purpose of enabling Defendant to raise money upon them by mortgage for the use of the Nabob, Defendant afterwards executed formal mortgages of all these premises to Plaintiffs. Plaintiffs obtained an Exparte Decree in this Suit and the premises were duly sold by the Master by Public Auction when Plaintiffs with the permission of the Supreme Court purchased "Pater's Gardens" and "Moorat's Gardens," the Company's Solicitor in his own name but on behalf of the Honorable Company purchased Sir James Home's Gardens, Brodie Castle, Wallajah Bagh and the two houses at the Red Hills, and P. Veerapermall Pillay purchased the house at Ennore. The premises sold for the aggregate sum of Rupees 1,88,450. There is a balance of upwards of 3½ lakhs of Rupees alleged to be still due from Defendant to Plaintiffs under the Decree in this Suit but which it must be borne in mind was obtained Exparte and without proof of consideration.

RAJAH COONDUN LALL

versus

PRINCE AZEEM JAH BAHADOOR, KYROON NISSA BAIGUM AND AUZEEM OON-
NISSA BAIGUM.

This is a Suit instituted and now pending on the Equity side of the Supreme Court for the purpose of establishing an equitable mortgage by the late Nabob to Plaintiff of the "Chepauk Palace" for securing advances from time to time made by Plaintiff to and for the use of the Nabob and in respect of which Plaintiff alleges that there is due to him for principal and interest upwards of a lac and half of Rupees. The Defendants have not yet answered.

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

No. 14.

ORDER THEREON, No. 348; dated 28th May 1858.

To be Recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

Cons 20 April 1858

In the Political Deptt

From The Hon^{ble} Comptroller

To The Chief Secy to Govt

Dated 18th May

Received 17

1858

with 3 enclosures

No. 329

Enclosed for the Comptroller
Bill as amended by the Advocate
General together with copies of
Mr. Boyson's instructions and of
the Advocate General's opinions re-
lating to the Bill: also a list
of actions & suits brought in respect
of the Nabob's debts to
J. R. Boyson
18/5/58

C. R. May
1858-59 13/4